

Date: November 19, 2013

To: Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
Mayor 

Agenda Item No. 14(A)(2)

Subject: Resolution Authorizing a Pier Check-in, Stevedoring and Security Services Access and Invoice Agreement between Miami-Dade County and MSC Crociere S.A.; and Waiving Competitive Bid Procedures in Connection with the Aforementioned Access and Invoice Agreement.

### **RECOMMENDATION**

It is recommended that the Board approve the accompanying resolution authorizing a Pier Check-in, Stevedoring and Security Services Access and Invoice Agreement (the "Access Agreement") between Miami-Dade County and MSC Crociere S.A.; and Waive Competitive Bid Procedures in connection with the aforementioned Access and Invoice Agreement.

### **SCOPE**

PortMiami ("Port") is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

### **FISCAL IMPACT/FUNDING SOURCE**

This item has no fiscal impact to the County. The contracts are revenue neutral to the Port since all expenses incurred as a result of contracting with pier check-in, stevedoring and/or security service providers will be billed to the cruise line.

An administrative fee in the amount of three hundred fifty dollars (\$350.00) per vessel call per service procured through the Port (pier check-in, stevedoring, and/or security) will be assessed by the County to MSC. It is anticipated that MSC will utilize only the security and stevedoring services during the first year of this agreement, with an administrative fee of \$700.00 per vessel call. Based on MSC's projected vessel deployments, this fee will generate approximately \$28,000 during FY 2014.

### **TRACK RECORD/MONITOR**

There are no outstanding business issues or financial obligations between the parties. The Seaport Department staff members responsible for monitoring the Access Agreement and related contracts are Juan Kuryla, Director Designee, Kevin Lynskey, Assistant Director for Business Initiatives and Hydi Webb, Manager of Business Development.

### **BACKGROUND**

MSC Crociere ("MSC") is an Italian cruise line owned by Mediterranean Shipping Company S.A. based in Geneva, Switzerland. MSC is registered to do business in the State of Florida through its North American sales and marketing agent, MSC Cruises (USA), Inc. MSC Cruises was founded in 1990 and is currently the fourth largest cruise operator in the world.

On January 24, 2012, the Board approved Resolution No. R-38-12, authorizing the execution of a Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A. ("MSC"). This agreement set forth terms in which MSC agreed to move its cruise ship operations from Port Everglades to PortMiami beginning Fiscal Year 2013/14. MSC has

committed Miami as the exclusive homeport for MSC vessels in South Florida (Palm Beach, Broward, Monroe, Brevard, and Miami-Dade Counties). MSC will begin operating the *MSC Divina* from its new homeport in Miami on November 19, 2013.

MSC now desires to enter into an Access Agreement with the County, similar to Access Agreements between the County and other cruise lines with an effective date of the arrival of the *MSC Divina* on November 19, 2013. Under the proposed Pier Check-in, Stevedoring, and Security Services Access and Invoice Agreement ("Access Agreement"), the Port will bill MSC via invoices containing Port Tariff items, stevedoring service charges, security service charges, and possibly future pier check-in services plus an administrative fee on a per vessel call basis. The administrative fee, as described in the Fiscal Impact section above, will be \$350.00 per vessel call per service provided. It is anticipated that MSC will use only the security and stevedoring services during the first year of this agreement, with an administrative fee of \$700.00 per vessel call. Based on MSC's projected vessel deployments, this fee will generate approximately \$28,000 during FY2014.

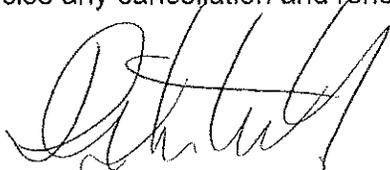
This Access Agreement is largely consistent with the agreements between the County and Norwegian Cruise Line approved via Resolution No. R-88-13 on February 5, 2013, and the County and Royal Caribbean Cruises Ltd. approved via Resolution R-646-13 on July 16, 2013. Such agreements already provide for access to the aforementioned services (security, stevedoring, and pier check-in services), modifications to the billing process, and a bid waiver. The bid waiver is necessary due to the fact that MSC will independently select, based on its own criteria, its stevedoring service provider from a pool of Port-permitted stevedoring companies, pursuant to provisions established by Chapter 28A of the Code, which hold a valid stevedoring license and a non-exclusive stevedoring service contract with the County. The County currently contracts with each service provider for Norwegian Cruise Line and Royal Caribbean Cruises Ltd., as an "agent" and would be doing the same for MSC should the Board approve this Agreement.

#### **EFFECTIVE DATE OF RESOLUTION**

The Mayor is recommending that the Resolution authorizing this Agreement become effective upon the approval of this Access Agreement by the Board and the earlier of (i) ten (10) days after approval by the Board or (2) execution of the Agreement by both MSC and the County. This effective date is needed because the anticipated execution of the Agreement is November 19, 2013, to coincide with the *MSC Divina's* first ship call to Miami, when the services in the Agreement will be required. The term of this Access Agreement shall be three (3) years to coincide with the MSC Preferred Berthing Agreement. MSC shall have the sole option to extend the Access Agreement for up to two (2) additional terms of one (1) year each.

#### **DELEGATED AUTHORITY**

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specific in the resolution which include the authority for the Mayor or designee to execute the Access Agreement and to exercise any cancellation and renewal provisions.



Jack Osterholt, Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** November 19, 2013

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's , unanimous ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A) (2)  
11-19-13

RESOLUTION NO. \_\_\_\_\_

RESOLUTION (1) APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A PIER CHECK-IN, STEVEDORING AND SECURITY SERVICES ACCESS AND INVOICE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MSC CROCIERE S.A.; (2) AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL CANCELLATION, TERMINATION, AND RENEWAL PROVISIONS AND ALL OTHER RIGHTS CONFERRED IN THE AFOREMENTIONED AGREEMENT; AND (3) WAIVING COMPETITIVE BIDDING AND BID PROTEST PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1 OF THE CODE OF MIAMI DADE COUNTY BY TWO-THIRDS (2/3) VOTE OF THE BOARD MEMBERS PRESENT IN CONNECTION WITH THE APPROVAL AND EXECUTION OF THE AFOREMENTIONED AGREEMENTS, THE MAYOR FINDING IT TO BE IN THE BEST INTEREST OF THE COUNTY TO DO

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board:

Section 1. Approves the Pier Check-in, Stevedoring and Security Services Access and Invoice Agreement ("Access Agreement") between Miami-Dade County and MSC Crociere S.A. and authorizes the County Mayor or the County Mayor's designee to execute same on behalf of Miami-Dade County, in substantially the form attached hereto as Exhibit A and made part hereof.

Section 2. Authorizes the County Mayor or the County Mayor's designee to exercise any cancellation, termination, renewal and other rights and provisions contained in the Access Agreement.

**Section 3.** Waives formal competitive bid procedures and bid protest procedures, including those set forth in Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21, in connection with the Access Agreement, hereby finding it is the best interest of the County to waive competitive bidding and bid protest procedures in these instances, with formal bidding and bid protest procedures being waived by two-thirds (2/3) vote of the Board members present pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the Code of Miami-Dade County.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman  
Lynda Bell, Vice Chair

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Jean Monestime  
Sen. Javier D. Souto  
Juan C. Zapata

Esteban L. Bovo, Jr.  
Audrey M. Edmonson  
Barbara J. Jordan  
Dennis C. Moss  
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 19<sup>th</sup> day of November, 2013. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney  
as to form and legal sufficiency. EW for RS

**PIER CHECK-IN, STEVEDORING AND SECURITY SERVICES ACCESS AND  
INVOICE AGREEMENT BETWEEN  
MIAMI-DADE COUNTY AND MSC CROCIERE S.A.**

**THIS AGREEMENT** is made and entered into this 25<sup>th</sup> day of October, 2013, by and between MSC Crociere S.A., a Swiss corporation ("MSC"), and Miami-Dade County, Florida, a political subdivision of the State of Florida ("County"). MSC and the County are hereinafter collectively referred to as "the Parties."

**WITNESSETH:**

**WHEREAS**, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter "the Port") is located; and

**WHEREAS**, the County operates the Port through the Miami-Dade County Seaport Department which is a department of the County; and

**WHEREAS**, January 24, 2012, by Resolution No. R-38-12 the County and MSC entered into a Preferred Berthing Agreement; and

**WHEREAS**, MSC will begin cruises from Miami on November 19, 2013; and

**WHEREAS**, MSC has requested that the Port provide security, stevedoring and pier check-in services directly to MSC from the date herein until the expiration of the Berthing Agreement; and

**WHEREAS**, the Parties agree that the County shall invoice MSC for Port Tariff items (e.g., water, Dockage, Wharfage, and Harbor Fees) as well as for terminal security services, stevedoring services, pier check-in services and administrative fees using a per vessel call Port "unitary invoice" (as defined in Section 9(a) herein); and

**WHEREAS**, MSC has agreed that the County will make available certain security services, pier check-in services, and stevedoring services to it through the Port's use of contractors; and

**WHEREAS**, the County is in the process of initiating and completing a competitive selection process for the provision of such services, at which time the County intends to enter into contract(s) ("Future Pier Check-In Services Agreements") with contractor(s) ("Future Pier Check-In Service Providers") competitively selected by County to provide Pier Check-In services as directed by the Port and its cruise line customers ("Cruise Lines") for cruise Vessels calling at the Port; and

**WHEREAS**, upon MSC selecting its stevedore, MSC shall negotiate with said stevedore to arrive at a mutually acceptable stevedoring scope of work and the pricing terms therefore, both of which shall be clearly set forth in a written document signed by an authorized representative of MSC, and subsequently confirmed in writing by the MSC Selected Stevedore, all in accordance with procedures and terms set forth herein; and

**WHEREAS**, MSC enters into this Access Agreement with the County for, among other things, the purpose of gaining access to stevedoring services provided by the MSC

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Selected Stevedore as described below, acknowledging that the County shall have no duty hereunder to provide any stevedoring services to MSC, nor will the County have any duty or responsibility hereunder or otherwise to supervise or manage the MSC Selected Stevedore, or any other stevedore, for the protection or benefit of MSC or any third parties except as otherwise agreed in this agreement; and

**WHEREAS**, MSC acknowledges, agrees and accepts that, except as otherwise agreed in this agreement, the County shall have no liability hereunder, or otherwise, to MSC or any third parties arising out of, in connection with, or relating to, in whole or in part, any performance, lack of performance, act or omission of any Selected Stevedore, any Security Service Provider or any Future Pier Check-In Service Provider(s) (as defined below in this Access Agreement), and MSC irrevocably waives and releases the County, its employees, departments, and agents for and from any and all such claims it has or may obtain in the future; and

**WHEREAS**, the Mayor is recommending the Board approve the County's continued entry into non-exclusive contracts with any Port-permitted stevedoring company desiring to enter into such contract with the County (singularly a "Stevedore" or collectively "Stevedores") using the boiler plate non-exclusive contract form previously approved by the Board on October 19, 2010 via Resolution No. R-1051-10 ("Stevedoring Service Contract" or "SSC") for the provision of stevedoring services to cruise lines (through the County) as requested by the Port's cruise line customers; and

**WHEREAS**, the County will continue to charge MSC for, among other things, Dockage, Wharfage, Harbor Fees and Water pursuant to and in accordance with the terms and conditions of the Port of Miami Tariff No. 10 (as may be amended from time to time) and the MSC CTA as amended.

**NOW, THEREFORE**, in consideration of the premises, and of the mutual covenants, term and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties hereto do and hereby mutually agree and bind themselves as follows:

**1. INITIAL TERM, EFFECTIVE DATE AND INCORPORATION OF WHEREAS CLAUSES**

This Agreement shall be effective upon approval of this Access Agreement by the Board and the earlier of ten days after approval by the Board or execution by both MSC and the County ("Effective Date"). The Parties contemplate that this date will be November 19, 2013. Subject to the terms and conditions contained herein, the Initial Term of this Access Agreement shall be the same of the Preferred Berthing Agreement. MSC shall have the sole option to request an extension of this Access Agreement from the County for up to two additional terms of one (1) year each subject to MSC providing written notice to the County at least six (6) months (180 days) prior to the termination of the then-existing term and provided further that MSC has not defaulted on any of its obligations to the County hereunder. This Access Agreement incorporates the terms of the WHEREAS clauses above.

**2. ACCESS TO STEVEDORING SERVICE PROVIDERS**

The County agrees to provide MSC with access to certain Port-permitted stevedoring service providers with a valid stevedoring license through and in conjunction

with certain non-exclusive stevedoring service contracts between the County and such Port-permitted stevedore(s), written work orders and/or notices detailing the specific scope of stevedoring work to be performed by the MSC Selected Stevedore for the benefit of MSC (hereafter, "Services") and the pricing terms therefore ("Pricing") to be negotiated between and approved in writing by MSC and the MSC Selected Stevedore and delivered to the County as set forth below, and the terms, conditions, and limitations set forth herein. Once MSC and the Selected Stevedore agree on the Stevedore Services and Pricing, MSC shall immediately provide the County with a signed document setting forth: (i) the identity of MSC's independently selected stevedore, (ii) the full scope of stevedoring Services to be provided to MSC by the Selected Stevedore (as negotiated between MSC and the Selected Stevedore), including, without limitation, a list of each vessel for which Services are requested and a vessel deployment schedule for each; and (iii) all Pricing terms applicable to such Services (as agreed upon by MSC and the Selected Stevedore), which document shall be executed by a duly authorized representative of MSC and be in a form acceptable to the County (hereafter, the "MSC Notice of Selected Stevedore" or "NSS"). The scope of Services may include all or any combination of the following types of stevedoring services to be performed by the MSC Selected Stevedore for the benefit of MSC, at the prices agreed upon by MSC in the MSC Notice of Selected Stevedore (plus any administrative or other fees or costs due the County hereunder), and under MSC's supervision:

- (a) Provide all necessary stevedoring and related labor, including foremen and such other stevedoring supervision as needed for the proper and efficient conduct of the work during straight-time and/or overtime as authorized or requested by MSC.
- (b) Provide training to foremen and key personnel to ensure a high level of service.
- (c) Provide necessary baggage handling equipment and labor including porters to handle/sort passengers' baggage to/from designated places in the cruise terminals at the Port ("Terminals") including through the security screening equipment and to/from Vessels during embarking and disembarking.
- (d) Provide labor to handle Vessel lines upon docking and undocking.
- (e) Provide labor and necessary equipment to handle the unloading of provisions and/or stores from trucks and loading the provisions and/or stores to Vessel, or vice-versa.
- (f) Provide labor as required to safely and effectively provide required services.
- (g) Provide labor and equipment on a special needs basis and/or for special projects as requested by MSC.

Upon the receipt of MSC's submission to the Port of a MSC NSS, and upon receipt by the County of clear, unequivocal, and unconditioned written confirmation from the Selected Stevedore (in a form acceptable to the County) of all information and representations included in the MSC NSS, the County agrees to direct the MSC

Selected Stevedore to provide the Services to MSC, so long as such MSC Selected Stevedore is contracted to the County to provide such Services (in case the MSC Selected Stevedore will not be permitted anymore to perform the Services, the County must inform MSC with thirty days notice in advance in order to permit MSC to select a new stevedore, unless the MSC's Selected Stevedore's permit is revoked for cause, including, but not limited to, the Stevedore's safety record). The MSC NSS shall also contain a statement that MSC's stevedore selection (from a list of licensed and Port-permitted stevedores electing to enter into certain boiler plate non-exclusive stevedoring contracts with the County in a form previously approved by the Board) was based on, among other factors, MSC's independent investigation and review of said stevedore's experience, competence, track record, equipment, management, productivity, efficiency, training, safety, and price and that said selection was made solely by MSC without any input or recommendation by the County. MSC may, at any time during the term this Access Agreement, change the MSC Selected Stevedore to another Port-permitted stevedore possessing a non-exclusive stevedoring contract with the County by providing the County with thirty (30) days prior written notice of such election, which notice shall include all of the information and statements required above and/or in Section 4 of this Access Agreement, including, without limitation, clear written delineation of the scope of Services and Prices agreed upon between MSC and its new Selected Stevedore.

### 3. MSC ACKNOWLEDGMENTS

Notwithstanding and prevailing over any contrary term, provision or implication contained herein, MSC acknowledges, accepts, and agrees to each of the following:

- (a) The County has no duty or responsibility hereunder, or otherwise, to provide any stevedoring services to MSC, to any vessel owned, chartered, or operated by or on behalf of MSC or any subsidiary or affiliate of MSC, or to any other cruise line or cruise vessel;
- (b) The County has no duty or responsibility hereunder, or otherwise, to manage, supervise, monitor or inspect the provision of stevedoring services by the MSC Selected Stevedore, any of its employees, agents or subcontractors, or any other stevedore service provider for the benefit of MSC or any third party; and
- (c) The Selected Stevedore was chosen solely by MSC in the exercise of its independent discretion and judgment, and without any input or recommendation by the County or any County employee, agent or consultant, and the County has made no warranties or representations herein or otherwise regarding the qualifications, abilities or suitability of the MSC Selected Stevedore, or any other stevedore, to fulfill the stevedoring requirements of MSC as set forth in the MSC Notice of Selected Stevedore or any written confirmation of the Services or Pricing received from the MSC Selected Stevedore, or to satisfactorily perform any other stevedoring requirements or functions;
- (d) Neither the County nor the Port of Miami possess either a County stevedoring license or a Port of Miami Stevedoring permit; and
- (e) The County shall have no liability to MSC, or to any third party, hereunder

or otherwise, which arises from, relates to, or is in connection with any act or omission of the MSC Selected Stevedore, any of its employees, principals, agents, contractors, or subcontractors (of any tier) or any act or omission of any other Port-permitted stevedore, or its employees, principals, agents, contractors, or subcontractors (of any tier) regardless of whether such acts or omissions are alleged to constitute negligence, recklessness, intentional acts, breaches of any contract or Work Order, misconduct of any kind or nature, or a violation of any federal, state, County, or other law, rule, ordinance, tariff, order or decree.

#### **4. MSC NOTICE OF SELECTED STEVEDORE**

The MSC Notice of Selected Stevedore, as defined in Section 2 hereof, will not become effective until (i) signed by a duly authorized representative of MSC, (ii) delivered to the Port's designated Contract Representative by MSC, which shall be the Port Director or his/her written designee, in a form acceptable to the County, (iii) fully and unconditionally confirmed in writing by the MSC Selected Stevedore in a form acceptable to the County, (iv) is approved in writing by the Port Director or his/her designee. Once effective, the MSC Notice of Selected Stevedore can only be modified in writing and such written modification will not become effective unless and until each of the preceding requirements (i) through (iv) of this subsection are met with respect to such modification (including, without limitation, MSC providing the County with an amended or superseding MSC Notice of Selected Stevedore). Following the County's receipt of the MSC Selected Stevedore's written confirmation of the terms set forth in the MSC Notice of Selected Stevedore, the County shall furnish MSC with a copy of such confirmation. The County shall have no liability or responsibility hereunder or otherwise in the event MSC and the MSC Selected Stevedore fail to mutually agree on the terms of Services or the Pricing therefore, if MSC is unable to or otherwise fails to provide the County with a MSC NSS in a form acceptable to the County, or if the MSC Selected Stevedore is unable to or otherwise fails to deliver to the County clear and unconditional written confirmation of all information and representations contained in the MSC Notice of Selected Stevedore in a form acceptable to the County, or for any failure of the MSC Selected Stevedore to perform any services as required or set forth in any MSC NSS, or the MSC Selected Stevedore's failure to perform any of such Services up to any applicable standard of care.

#### **5. TERMINAL SECURITY SERVICES TO BE PROVIDED**

(a) The County shall offer MSC contract security services provided by the County's contractor competitively selected by the County (hereinafter the "Security Provider"), through uniformed security personnel (the "Security Personnel"), and security equipment (the "Security Equipment") (together Security Personnel and Security Equipment shall hereinafter be referred to as the "Security Services") at the cruise terminals at the Port of Miami where and when MSC vessels call (the "Premises") as set forth in the County's Contracts with the competitively selected Security Provider(s) approved by the Board on or about February 1, 2011 pursuant to Resolution Number R-73-11, or future competitively selected Security Providers approved in future Board Resolutions ("Security Contracts") as requested by MSC in writing to the County's Project Manager (as defined in the Security Contracts) provided such written requests are consistent with, permitted by, and do not expand the scope of such contracts.

(b) Security Personnel shall be responsible for compliance with the relevant requirements of the Facility Security Plans in compliance with the requirements of the Maritime Transportation Security Act of 2002, as amended, and its related regulations (collectively, the "MTSA"), Section 311, Florida Statutes, as amended, and any related regulations (collectively, the "FTSA"); and the International Maritime Organization's International Ship and Port Facility Security Code (the "ISPS Code") during the hours and on the dates directed by the County's Project Manager or his designee, but generally each call will arrive at approximately 0600 hours and depart at approximately 1700 hours the same day. Nonetheless, at MSC's written request, the County's Project Manager or his designee must direct that Security Services be provided at other hours. MSC agrees that the Security Services furnished under this Access Agreement shall be in conformity with practices which are generally current in the security industry. The Parties agree that the County does not represent and cannot warrant that the Security Services furnished will prevent loss. The County's responsibility is limited to solely providing physical security services and the County has not been engaged as a consultant or otherwise to provide an assessment of security needs at the locations at which services are provided under this Access Agreement other than as provided for in the Facility Security Plan (FSP) approved by the United States Coast Guard. The County shall contractually require the Security Provider to provide services, including compliance measures, which shall include the following:

(i) meeting with the appropriate Port security officers and/or appropriate employees of MSC prior to arrival of any cruise vessel that may call at the Premises (the "Vessel") and meeting with the relevant Vessel security officers upon arrival of the Vessel to use best efforts to ensure that the Premises are secure;

(ii) access control at the Premises for passengers, crewmembers, vendors, contractors, or other cruise line employees or guests;

(iii) screening of passengers, crewmembers, vendors, contractors or other cruise line employees or guests accessing the Vessel via the gangway for prohibited items including, but not limited to, those items set forth in a list to be provided separately by the Port or its designee, using the Security Equipment;

(iv) screening of all passenger baggage for prohibited items including, but not limited to, those items to be identified in writing by the Port and/or MSC, using the Security Equipment; and

(v) such other reasonable additional security measures as may be requested, and mutually agreed upon in writing from time to time by an authorized County representative, an authorized MSC security and surveillance representative, a Vessel's security officer, or their respective authorized designees (if applicable).

Security Personnel shall have the proper licenses required to perform the Security Services.

(c) MSC acknowledges that the Security Provider shall be solely responsible for delivery, installation, modifications, calibration, repairs and maintenance of the Security Equipment provided, however, the County shall be responsible for arranging for provision of electrical service at all cruise terminals at which Security Services will be provided. The Security Provider will be contractually required to keep its Security

Equipment fully operational at all times during embarkation of a Vessel. In the event of a breakdown or malfunction of any of the Security Equipment, the County shall ensure that the Security Provider is contractually required to (i) promptly use alternative screening methods complying with applicable law and regulations, and (ii) to arrange for repair or replacement of such equipment before the next embarkation period. If any Security Equipment is replaced during the Term, the Security Provider will be contractually required to use replacement Security Equipment of equivalent or better capability than the Security Equipment it replaced.

(d) The County shall contractually require the Security Provider to coordinate with County and MSC authorities to ensure security checkpoints and screening areas are functional and utilized in an efficient manner.

1. Equipment provided shall be in accordance with the Security Contracts.
2. Personnel provided shall be in accordance with the Security Contracts.
3. Security Services include, but are not limited to, the following:
  - a. Terminal access control for crew, vendors, contractors, and guests (including provision of a listing of all who visited the Terminal or Vessel during the Vessel's call, excluding all crew and passengers);
  - b. The security screening of all persons and their belongings who board the vessel via the passenger gangway;
  - c. The security screening of passenger checked baggage; and
  - d. Providing screening of Vessel provisions using K-9 services trained/certified in accord with applicable laws and regulations.
4. For each Vessel call for which the County through the Security Provider provides security services pursuant to this Access Agreement, the County shall require the Security Provider to assign one Facility Security Officer on each day an MSC Vessel calls at the Port and a Terminal Security Officer (TSO) for each of the Terminals at which a Vessel calls and shall require the Security Provider to be responsible for submitting a FSP to, and seeking its approval by, the United States Coast Guard. Also, MSC acknowledges that the Security Provider is responsible for the implementation of said Plan.
5. The County shall contractually require the Security Provider to be responsible for the preparation and submission of the Declaration of Security required by the United States Coast Guard for each Vessel call at the Port for which the County through the Security Provider provides services pursuant to this Access Agreement.

(e) Notwithstanding and prevailing over any contrary term, provision, or implication contained in this Access Agreement, nothing in this Access Agreement requires the County to provide, or requires others to provide, any Security Services to, for, or in connection with any County, Port, MSC or third party facility, building, vessel, automobile, bus, minibus, motor coach, cab, limousine, truck, or any other vehicle, or structure other than a Port cruise

terminal occupied by a MSC cruise vessel, nor shall the County or its Security Providers, employees, or contractors have any duty hereunder or otherwise to provide security or terminal Security Services on or within any vessel owned, operated, chartered or controlled by MSC or any third party.

## 6. SECURITY PRICING

Pricing for the provision of security services shall be at the rates set forth in any Security Service Agreement(s) which rates MSC hereby acknowledges, accepts and approves. Notwithstanding the foregoing, should any Security Provider's rates charged to the County for Security Services contemplated herein be increased, MSC shall be provided written notice of such increases and shall be subject to such increases.

## 7. PIER CHECK-IN SERVICES TO BE PROVIDED

(a) The County shall offer MSC contract Pier Check-In services provided by any Future Pier Check-In Service Provider that may be competitively selected by the County (hereinafter the "Pier Check-In Service Provider"), through personnel provided by the Pier Check-In Service Provider as set forth in any Pier Check-In Service Agreement with a Future Service Provider at the cruise terminals at the Premises as set forth in the Future Pier Check-In Service Agreements and as requested by MSC in writing to the County's Project Manager (as defined in the Future Pier Check-In Services Agreements) provided such written requests are consistent with, permitted by, and do not expand the scope of such contracts.

(b) The pier check-in services to be provided by the County through any Future Pier Check-In Service Provider ("Contractor") may include:

1. Contractor shall provide embarkation staff at the designated pier at the assigned Port cruise terminal (the "Terminal") to process Passengers for boarding the awaiting MSC Vessel. Furthermore, upon arrival of a MSC Vessel, Contractor shall provide disembarkation staff at the Terminal to coordinate the CBP process, passenger baggage claim, and transfer of the Passengers from the Terminal to the transportation areas. Contractor has the right and obligation to control all personnel engaged. The duties and responsibilities of Contractor's embarkation and disembarkation staff shall include, without limitation, those set forth in any Future Pier Check-In Service Agreement.
  - i. Contractor and its personnel must comply with the policies and procedures set forth in the Manual as they may be amended by MSC for ground handling services.
  - ii. Upon execution of this Access Agreement and any Future Pier Check-In Service Agreement by the Parties, The Future Pier Check-In Contractor shall submit proposed embarkation and disembarkation staff levels to the County's Project Manager for approval by the County and by MSC. Upon approval by the County's Project Manager and MSC, such staffing levels shall be guaranteed for the Term of this Agreement.
  - iii. The standards of quality for the operation of the services hereunder, including, but not limited to, efficiency of operations performed by

Contractor conducting passenger check-in/registration, shall be consistent with the standards of other pier check-in services providers for luxury passenger cruise vessels. Should Contractor in any way fail to maintain the standards of quality required hereunder as determined by the County's Project Manager and/or MSC and communicated to the Contractor in writing by the County's Project Manager, in the County's discretion, or the discretion of MSC as stated in writing to the County, the County will give Contractor notice in writing advising of the discrepancy in standards constituting default(s) and Contractor shall have a period of thirty (30) days thereafter to cure such default(s). Thereafter, if Contractor fails in the County's discretion, or the discretion of MSC as stated in writing to the County, to cure such defaults, the County shall delegate to MSC the right to immediately implement such corrective measures as are appropriate under the circumstances, and, with the written consent of MSC, the County may terminate any Future Pier Check-In Services Agreement by providing Contractor thirty (30) days prior written notice thereof.

The Contractor's provision of Services as set forth below including, but not limited to, as applicable and as requested)

- Coordination of training & development for check-in and/or manual or MSC's computer systems guest check-in with staff. The number of training hours will be mutually agreed upon prior to the start of each cruise season. Facilities and equipment shall be provided and paid by the Contractor. All training should include the following:
  - a. Full familiarization with check-in system
  - b. Full familiarization with manual check in procedures
  - c. General ship terminology
  - d. Immigration procedures & related forms
  - e. US Customs and Border Protection
  - f. Security Procedures
  - g. Agent Responsibilities
  - h. MSC Corporate Overview
  - i. Policies and Procedures
  - j. Uniform Code
- Maintain a good standing relationship between MSC and the local authorities at all times.
- Set-up and break down of all debark/embark equipment.
- Check-in set up for categories of guests, unless otherwise advised by MSC Manager of embarkation, such as:
  - a. Special Assistance for Physically Challenged
  - b. VIP Categories
  - c. All other guests including stateroom updates
- Contractor will be open for business during the times agreed upon between the parties.
  - a. All check-in stations must be manned at peak hours.
  - b. Emergency contact information for after-hours must be provided to MSC.
- Coordination of priority boarding in the following order:
  - a. Wedding Party
  - b. Top Stateroom categories

Penthouse suites

- c. Priority guests
- Coordinate and determine adequate staffing for pier in accordance to MSC's requirements.
  - a. Submit a terminal matrix plan of all staffing levels and positions to MSC for approval at least sixty (60) days prior to the first call.
  - b. If necessary, MSC may mutually agree with contractor to replace one of its employees at any time with good cause.
  - c. Staff shall at all times be neatly groomed and suitably attired in compliance with the written standards promulgated by MSC in the Manual.
- Coordinate all disembarkation/embarkation formalities on turnaround day. This includes working with the Control Center to send a final manifest for all inbound and out bound Passengers ten (10) days prior to MSC Vessel arrival.
- Responsible for assisting guests with disembarkation, wheelchair assistance, special needs, lost and leftover luggage, damaged luggage, and left behind luggage.
- Coordinate with MSC Vessels for refreshments that are set up in the terminal (supplied by respective vessel) Refreshments will be set up at the start of embarkation.
- Responsible to have Fax & Copy machines on premises for copying passports, Visa's or ARC cards.
- Communication with MSC Vessels and Port Agent prior to sailing time in reference to any late arrival of embarking guests.
- Responsible for submitting a turnaround report to the MSC Corporate office within twenty four (24) hours of MSC Vessel's departure. This report must include all aspects of operation including:
  - Pier (debark and embark)
  - Denied boarding
  - Left and lost luggage
  - Pier collections
  - Any relevant event and/or task

**8. PERSONNEL AND PRICING**

Pricing for the provision of pier check-in service shall be at the rates set forth in any Future Pier Check-In Service Agreement(s) which rates MSC hereby acknowledges, accepts and approves.

**9. MSC PAYMENT OBLIGATIONS.**

(a) Unitary Invoice. For purposes of this Access Agreement, "Unitary Invoice" shall mean a per vessel call Port invoice, and any supplements thereto, containing Port Tariff and non-Tariff fees, charges, and costs imposed on or chargeable to MSC, including, without limitation, charges for Wharfage, Dockage, water, Harbor Fees, Stevedoring Services, Security Services, Pier Check-In Services, Administrative Fees (as defined in subsection 9(f) below) and any other applicable Tariff or non-Tariff fees, charges, or costs imposed on or chargeable to MSC per the Port Tariff or this Access Agreement.

(b). Port Tariff Charges. MSC shall pay the County for all water,

Dockage, Wharfage, Harbor Fees and other fees, charges, and costs due or to become due hereunder or under the terms of the Port Tariff and shall timely remit all such fees, charges, and costs to the County via wire transfer in accordance with the payment terms set forth in section 9(g) below. If and where applicable, discounts from individual Tariff items will be as set forth in the other agreements between the Parties, as amended, subject to the terms, conditions, and limitations set forth therein.

(c) Stevedoring Services. Upon the County's receipt of invoices from the MSC Selected Stevedore providing Services to MSC, the County shall bill MSC (as part of the Unitary Invoice) for the full amount invoiced by such stevedore to the County.

(d) Security Services. Upon receipt of invoices from the Security Provider, the County shall bill MSC (as part of the Unitary Invoice) for the full amount invoiced by the Security Provider to the County.

(e) Pier Check-In Services. Upon receipt of invoices from any Future Service Provider, the County shall bill MSC (as part of the Unitary Invoice) for the full amount invoiced by any Future Pier Check-In Service Provider to the County.

(f) Administrative Fee. In addition to the fees and charges due to the County from MSC set forth above, MSC shall pay the County an administrative fee of three-hundred and fifty dollars (\$350.00) per vessel per call (the "Administrative Fee") per service provided (i.e. Pier Check-In Services, Security Services, and/or Stevedoring Services), except that if Seaport Department Tariff 010 is amended to provide for an Administrative Fee for access to Pier Check-In Services, Security Services and/or Stevedoring Services, the Tariff shall control. The Administrative Fees due from MSC shall be included in the Unitary Invoice(s) and shall be paid by MSC to the County in accordance with the payment terms set forth in section 9(g) below

(g). MSC Payments to County. On a monthly basis, or at such greater frequency as the Port Director may determine or is agreed between the Parties, the Port shall provide MSC with a Unitary Invoice(s) setting forth the various fees, charges, costs, and/or reimbursements due the Port from MSC hereunder or per the Port Tariff. MSC shall pay the County all amounts billed in the Unitary Invoices (via wire transfer per Port's Assistant Director of Finance's written instructions) no later than fourteen (14) calendar days from receipt of said invoice(s). Should the Port deem it necessary to later supplement, re-issue, or re-state any previously issued Unitary Invoice, MSC shall pay the County all previously unpaid portions thereof, via wire transfer (per Port's Assistant Director of Finance's written instructions), no later than fourteen (14) calendar days from receipt of said supplement, re-issued or re-stated invoice.

10. **This Section Intentionally Deleted.**

11. COMMITMENT ON INDEMNITY AND INSURANCE

- (a) Indemnity, Hold Harmless, and Duty to Defend Obligations of MSC. MSC agrees to indemnify and hold the County harmless for any fine, charge, assessment or penalty of any kind or in any form whatsoever that is based on any action, inaction, or omission by MSC or any of its affiliates, subsidiaries, employees, contractors, subcontractors or passengers. Further, MSC agrees to indemnify, protect and hold harmless the County, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description (collectively "Claims") to which the County, its agents, officers or employees may be subjected (1) which are caused by or arise out of any acts or omissions of MSC or any of its agents, employees, officers or contractors, including without limitation Claims based on negligence, fraud, deceptive and unfair trade practices, deceptive advertising, non-disclosure, breach of contract, passenger billing or invoicing, breach of fiduciary duty, intentional torts, or any other type of Claims, or (2) which arise from, are a direct result of, grow out of, or are connected in any way with this Access Agreement, except to the limited extent such Claims are based solely on the grossly negligent or intentional acts or omissions of the County or its employees, or officers (other than the County's act of entering into this Access Agreement, taking any actions required of the County hereunder, or entering into any non-exclusive stevedoring contract with any Port permitted stevedore as contemplated herein, Pier Check-In Services Agreement as contemplated herein, and/or any security contract as contemplated herein). This indemnity obligation shall apply regardless of whether such Claims are against or sustained by others to whom the County, its agents or employees may become liable. Upon request of the County, MSC shall undertake to defend, at its sole cost and expense (including payment of all legal fees and costs at all levels, including trial and appellate), any and all Claims against the County in connection with the matters specified in this Section.
- (b) No Indemnification by County. The County does not agree to indemnify MSC for any Claims to which MSC, its agents or employees may be subjected which (1) are caused by or arise out of the acts or omissions of any MSC Selected Stevedore or other Stevedore or either's agents, employees, officers or contractors, (2) are caused by or arise out of any act or omission of Security Provider, (3) are caused by or arise out of any act or omission of any Future Pier Check-In Service Provider or (4) which arise from, grow out of, or are connected in any way with either this Access Agreement, any County Stevedoring Contract, any Pier Check-In Services Agreement or any County security contract with any Service Provider.
- (c) Insurance Coverage Required. MSC shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. MSC shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which name the County as an additional insured and which indicate that the

insurance coverage has been obtained which meet the requirements as outlined below:

- (i) Crew Insurance. Said insurance shall cover all persons employed as crew of the Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 U.S.C. Section 688, (The Jones Act) and under General Maritime Law.
- (ii) General Liability and Marine Liability Insurance. With respect to the use and activities of MSC and its employees, contractors, subcontractors (of any tier), agents, customers, invitees and guests in and around the Terminals and Premises, General Liability and Marine Liability Insurance must be in place on a comprehensive basis in an amount not less than \$10,000,000 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of MSC and its employees, contractors, agents, customers, invitees and guests in and around the Terminals, the Premises, and/or any MSC vessel in the vicinity thereof. This coverage must also include, but is not limited to, embarkation and disembarkation of all MSC Vessels. Miami Dade County must be named as co-assured under the Misdirected Arrow Clause
- (iv) Pollution Liability Coverage. MSC shall maintain at its sole cost and expense for MSC Vessels used in connection with this Access Agreement, operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.
- (v) Vessel Liability Insurance (Hull and Machinery). Covering all MSC Vessels used in connection with this Access Agreement, whether owned or chartered, in an amount not less than \$10,000,000 per occurrence for hull and property damage.
- (d) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (c) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County's Risk Management Division, or Companies holding a valid Florida Certificate,

or

as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida

Department of Insurance and which are members of the Florida Guaranty Fund.

- (e) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminals, MSC shall notify the County in writing as soon as reasonably possible after it becomes aware of such injury or damage and shall promptly thereafter furnish to the County copies of all related reports and notices given to MSC's insurance carrier or carriers.

## **12. EXCLUSIVE VENUE AND CHOICE OF LAW**

It is mutually understood and agreed by the Parties hereto, that this Access Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Access Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission.

## **13. NO ORAL CHANGE OR TERMINATION**

This Access Agreement and the Exhibits and appendices appended hereto and incorporated herein by reference, together with the to-be-executed MSC Notice of Selected Stevedore (when received and approved in writing by the County), constitute the entire Agreement between the Parties with respect to the subject matter hereof. This Access Agreement supersedes any prior agreements or understandings between the Parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Access Agreement cannot be changed or terminated orally.

## **14. COMPLIANCE WITH APPLICABLE LAWS**

Throughout the Term of this Access Agreement, MSC shall comply with all Applicable Laws relating to this Access Agreement, MSC's use of the Terminals and MSC's use of the Port. Nothing contained herein is intended to exempt MSC from any otherwise applicable provision of the Port of Miami Tariff No. 10 as same be amended from time to time in the County's discretion.

## **15. NUISANCE**

MSC shall not commit any nuisance on the Port or in the Terminals or do or permit to be done anything that may result in the creation or commission of a nuisance on the Port or in the Terminals.

## 16. REPRESENTATIONS

Each party represents to the other that this Access Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms. The County represents that the execution, delivery and performance by County of this Access Agreement complies with all laws, rules, regulations and orders applicable to County; and that County has full authority to enter into and perform this Access Agreement in accordance with its terms.

## 17. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Access Agreement to the County shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder to the County upon a default of MSC shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided. As to MSC, its sole and exclusive remedies for any default or breach of this Access Agreement committed by the County shall be those limited MSC remedies that are expressly preserved and enumerated in Section 20(b)(i) – (iv) of this Access Agreement.

## 18. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

## 19. EVENTS OF DEFAULT

- (a) MSC shall be in default under this Access Agreement if any of the following events occur and continue beyond the applicable grace period:
  - (i) MSC fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from MSC's receipt of written notice from the County of failure to meet such payment obligation.
  - (ii) MSC fails to perform or breaches any term, covenant, or condition of this Access Agreement which is not cured within sixty (60) days after receipt of written notice from the County specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, MSC shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.
  - (iii) If MSC shall be adjudicated bankrupt, or if MSC shall make a general assignment for the benefit of creditors, or if in any proceedings based upon the insolvency of MSC are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of MSC which is not dismissed within sixty (60) days of such appointment.

- (b) The County shall be in default under this Access Agreement if the County fails to perform or breaches any term, covenant, or condition of this Access Agreement and such failure is not cured within thirty (30) days after receipt of written notice from MSC specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not unreasonably interfere with the operations of MSC at the Port, the County shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

**20. REMEDIES UPON DEFAULT**

- (a) County Remedies Upon MSC Default. Upon the occurrence of a MSC default under this Access Agreement not cured within the applicable grace period, the County may pursue all remedies available at law or in equity, including, without limitation, specific performance of this Access Agreement.
- (b) MSC's Sole and Exclusive Remedies Upon Default. Notwithstanding and prevailing over any contrary term, provision or implication contained herein, MSC hereby irrevocably waives, relinquishes and releases all of its current and future remedies, potential remedies, claims, and causes of action, at law or equity, arising from, relating to or in connection with any alleged County breach or default of this Access Agreement or any County obligation hereunder excluding only the following preserved MSC remedies, which shall be MSC's sole and exclusive remedies for any alleged County breach or default of this Access Agreement:
  - (i) MSC may terminate this Access Agreement for its convenience as provided and in accordance with the terms set forth in Section 28 hereof (Termination for Convenience);
  - (ii) MSC may exercise its right to change stevedores hereunder from the MSC Selected Stevedore to another Port-permitted stevedore possessing a non-exclusive stevedoring contract with the County pursuant to the terms and conditions set forth herein governing an MSC stevedore selection change;
  - (iii) MSC may pursue a claim(s) against any applicable policy of insurance that names MSC as either a beneficiary or additional insured; and
  - (iv) MSC may pursue any viable claim it has, if any, against the MSC Selected Stevedore, provided, however, that the County is not joined in such claim, and further provided that should the MSC Selected Stevedore bring or assert a claim, counterclaim, cross-claim or third party claim against the County or any County department, instrumentality, employee, or agent arising or relating to this Access Agreement or such stevedore's provision of stevedoring services to or on behalf of MSC or any of its vessels, subsidiaries, affiliates, customers, invitees or guests, then MSC

shall indemnify, hold harmless and defend the County, its employees, departments, instrumentalities and agents therefrom, including, without limitation, the payment of all resulting County losses, damages, and costs, including reasonable legal fees and costs (including appellate).

**21. LIMITATIONS ON COUNTY LIABILITY**

Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, or otherwise, the County shall have no liability to MSC or any of its invitees, guests, agents, subsidiaries, affiliates or other third parties arising from, relating to or in connection with, in whole or in part:

(a) any act or omission of any MSC Selected Stevedore or any contractor, subcontractor (of any tier), agent, employee, principal, guest or invitee thereof; and/or

(b) any act or omission of McRoberts or any Security Provider, or any contractor, subcontractor (of any tier), agent, employee, principal, guest or invitee of either; and/or

(c) any act or omission of any Future Pier Check-In Service Provider, or any contractor, subcontractor (of any tier), agent, employee, principal, guest or invitee of either; and/or

(d) any alleged failure on the part of the County or any County employee, agent, department or instrumentality to investigate, manage, supervise, train, monitor or inspect the MSC Selected Stevedore, any of its employees, agents, principals, subsidiaries, affiliates, contractors or subcontractors (of any tier) or any other Port permitted stevedore; and MSC hereby waives any claims it has or may obtain against the County or any of its departments, agents or employees that arise from, relate to or are connected with subsections 21(a), (b), or (c) above.

**22. NO CONSEQUENTIAL DAMAGES.**

Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, or otherwise, under no circumstances shall the County have any liability to MSC or any of its employees, invitees, guests, customers, agents, subsidiaries, affiliates or other third parties for consequential damages of any type or nature, including, without limitation, lost profits, lost opportunity costs, lost revenues of any kind, or any damages arising from or relating to claims brought against MSC by third parties.

**23. NO DELAY OR TIME RELATED DAMAGES.**

Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, or otherwise, the County shall have no liability to MSC or any of its employees, invitees, guests, agents, subsidiaries, affiliates or other third parties for any delay damages or any other type of time related damages.

**24. CAP ON ANY POTENTIAL COUNTY DAMAGES ARISING HEREUNDER**

The parties hereto mutually agree that under no circumstances may the County's

total and cumulative liability for any damages arising from any and all breaches of this contract by the County, if any, exceed the lesser of the County's Administrative Fee for one year or \$100,000, MSC agreeing to waive any claims it may have or obtain hereunder against the County for any amounts in excess of such cap.

**25. ATTORNEY FEES**

In the event an action is commenced by a party resulting from a default under this Access Agreement, each party shall bear their own attorney fees and costs.

**26. CONFLICT OF PROVISIONS**

If there is any conflict between the provisions of this Access Agreement and the MSC CTA as amended by Amendment No.1 thereto, the provisions of this Access Agreement shall prevail with respect to the subject matter hereof.

**27. FORCE MAJEURE; INABILITY TO PERFORM**

County and MSC shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, MSC, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, MSC, its contractors or subcontractors), providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen calendar days of the commencement of such event. Notwithstanding and prevailing over the foregoing, nothing contained in this section 27 shall apply to, or relieve MSC from, any of its payment, indemnity, hold harmless, and duty to defend obligations contained in this Access Agreement.

**28. TERMINATION FOR CONVENIENCE**

In addition to cancellation or termination as otherwise provided in this Access Agreement, either party may at any time, in its sole discretion, with or without cause, terminate this Access Agreement by thirty (30) days written notice to the other party. In such event MSC shall pay all outstanding invoices to the County for any stevedoring, security, check-in, or other services provided pursuant hereto to, or for the benefit of MSC, or any of its affiliates, vessels, or customers through the effective date of the termination.

**29. SEVERABILITY**

If any term or provision of this Access Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Access Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**30. ASSIGNMENT**

The term of this Access Agreement shall inure to the exclusive benefit of MSC

and is binding upon MSC. MSC will not transfer, assign or pledge this Access Agreement or any rights hereunder without the prior written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, MSC may transfer, assign or pledge this Access Agreement to an affiliate owned or controlled by MSC without consent upon written notice to the County, provided, however, that the intended (MSC affiliate or subsidiary) recipient of such assignment, transfer or pledge first provides an unqualified written assumption of all MSC's payment and other obligations hereunder to the County stating that it will be jointly and severally responsible for all of such MSC obligations to the County hereunder along with MSC. For the purposes of this Access Agreement, an assignment shall not be deemed to occur upon a transfer of stock or interest in MSC among its current shareholders.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties, but MSC's obligations under Section 11 (Commitment on Indemnity and Insurance) of this Access Agreement shall also remain in full force and shall remain binding on MSC after any assignment by MSC, unless the County has consented in writing to such assignment.

### **31. OBLIGATIONS SURVIVING TERMINATION HEREOF**

Notwithstanding and prevailing over any contrary term or provision contained herein, including any early termination rights contained herein, in the event any party hereto exercises any lawful termination rights herein, or in the event this Access Agreement expires in accordance with its terms, the following obligations shall survive such termination or expiration (as the case may be) and continue in full force and effect until the expiration of a five (5) year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination or expiration (as applicable), even if such payments are not actually due until after the date of termination or expiration, as the case may be; (ii) any and all indemnity, hold harmless, and duty to defend obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

### **32. LACK OF AGENCY RELATIONSHIP**

Nothing contained herein shall be construed as establishing an agency relationship between the County and MSC and neither MSC nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of MSC or its subsidiaries, divisions or affiliates.

### **33. NOTICES**

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by United States Registered or Certified Mail, return receipt requested, postage prepaid, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Access Agreement shall be

deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or a United States legal holiday.

FOR COUNTY:

Bill Johnson  
Director, Seaport Department  
Miami-Dade County  
1015 North America Way  
Miami, Florida 33132-2081  
Telephone Number: 305-371-7678  
Telecopy Number: 305-347-4852

with a copy to:

County Attorney  
111 Northwest 1st Street  
Suite 2810  
Miami, Florida 33128  
Telephone Number: 305-375-5151  
Telecopy Number: 305-375-5634

FOR MSC:

MSC Crociere S.A.  
Chemin-Rieu 12-14  
1208 Geneva, Switzerland  
Attention: Corporate Legal Department  
Telephone Number: +41 22 70 38 888  
Telecopy Number: +41 22 70 38 723

with a copy to:

Richard E Sasso  
MSC Cruises USA  
6750 North Andrews Ave.  
Fort Lauderdale, Florida 33309  
Attention: Chief Executive Officer  
Richard E. Sasso  
Telephone Number: +1 954 772 6262  
Telecopy Number: +954 776 5881

**34. COUNTERPARTS**

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

**35. DESIGNATION OF MSC'S AUTHORIZED REPRESENTATIVE**

Within ten (10) calendar days of the execution of this Access Agreement, MSC shall provide the Port Director with written notice of the MSC officers or employees duly authorized by MSC to approve and execute Work Orders and MSC Notice(s) of Selected Stevedore on MSC's behalf and who are otherwise authorized by MSC to make decisions regarding this Access Agreement for and on behalf of MSC. Such authority

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shall remain in full force and effect unless, and until, revoked by MSC via written prior notice to the Port Director, which notice shall clearly identify the replacement MSC authorized representative(s) hereunder.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this document to be executed by their duly authorized officers.

Signed, sealed and delivered in the presence of:

MIAMI-DADE COUNTY,  
FLORIDA, a political subdivision  
of the State of Florida

By: \_\_\_\_\_  
Carlos A. Gimenez  
County Mayor

Approved as to legal form and sufficiency

ATTEST:  
CLERK OF THE BOARD

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Signed, sealed and delivered

MSC CROCIERE S.A.

ATTEST:

By: \_\_\_\_\_  
Pierfrancesco Vago  
Executive Chairman

By: \_\_\_\_\_